

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION



MARK RYAN ALLEN, SCOTT BIMBA, §
DAVID BLACKWELL, MATTHEW §
BOYCE, SCOTT CARLISLE, §
RAYMOND S. FRY III, DANIEL KLEIN, §
TIM LANE, RYAN McGOUGH, §
NICHOLAS ROSS, REGINALD §
SIMPSON, SPIROS MYLES THEODORE, §
JEFF WHITE, JACKSON HOU, ERIC §
RINKER, HARMANDEEP SINGH, §
STEVEN W. WRIGHT JR., MICHAEL §
BEST, BRETT SAMPSON, BRYAN §
MURPHY, GEORGE BARKSDALE, §
and JOSHUA BAFALIS, §

Plaintiffs, §

v. §

COGENT COMMUNICATIONS, INC., §
1015 31st Street, NW §
Washington, DC 20007 §

Serve: Corporation Service Company §
Bank of America Center, 16th Floor §
1111 East Main Street §
Richmond, Virginia 23219 §

Defendant. §

CIVIL ACTION NO. 1:14CV459
JCC/TRJ

JURY TRIAL DEMANDED

PLAINTIFFS' ORIGINAL COMPLAINT

I. SUMMARY

1. Cogent Communications, Inc. ("Defendant" or Cogent") failed to pay Plaintiffs, who worked as inside sales personnel, namely, Regional Account Managers and Global Account Managers, overtime as required by the Fair Labor Standards Act ("FLSA").

2. Cogent paid these non-exempt employees a salary and occasional commissions, but no overtime compensation.

3. This action seeks to recover the unpaid wages and other damages owed to Plaintiffs.

II. JURISDICTION AND VENUE

4. This Court has original subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because this action involves a federal question under the FLSA.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b).

III. THE PARTIES

6. Mark Ryan Allen is a resident of Haymarket, Virginia, and worked for Cogent's Herndon office as Regional Account Manager III and Global Account Manager.

7. Scott Bimba is a resident of Fairfax, Virginia, and worked for Cogent's Herndon office as a Regional Account Manager.

8. David Blackwell is a resident of Reston, Virginia, and worked for Cogent's Herndon office as a Regional Account Manager.

9. Matthew Boyce is a resident of Washington, D.C., and worked for Cogent's Herndon offices as a Regional Account Manager.

10. Scott Carlisle is a resident of Arlington, Virginia, and worked for Cogent's Herndon offices as a Regional Account Manager.

11. Raymond S. Fry III is a resident of Fairfax, Virginia, and worked for Cogent's Herndon offices as a Regional Account Manager.

12. Daniel Klein is a resident of Fairfax, Virginia, and worked for Cogent's Herndon offices as a Regional Account Manager.

13. Tim Lane is a resident of Fairfax, Virginia, and worked for Cogent's Herndon offices as a Regional Account Manager.

14. Ryan McGough is a resident of Sterling, Virginia, and worked for Cogent's Herndon offices as a Regional Account Manager.

15. Nicholas Ross is a resident of Falls Church, Virginia, and worked for Cogent's Herndon offices as a Regional Account Manager.

16. Reginald Simpson is a resident of Germantown, Maryland, and worked for Cogent's Herndon offices as a Regional Account Manager and Global Account Manager.

17. Spiros Myles Theodore is a resident of Gaithersburg, Maryland, and worked for Cogent's Herndon offices as a Regional Account Manager.

18. Jeff White is a resident of Henderson, Nevada, and worked for Cogent's Herndon offices as a Regional Account Manager.

19. Jackson Hou is a resident of Sterling, Virginia, and worked for Cogent's Sterling offices as a Regional Account Manager.

20. Eric Rinker is a resident of Ashburn, Virginia, and worked for Cogent's Sterling offices as a Regional Account Manager.

21. Harmandeep Singh is a resident of Springfield, Virginia, and worked for Cogent's Sterling offices as a Regional Account Manager.

22. Steven W. Wright, Jr. is a resident of Ashburn, Virginia, and worked for Cogent's Sterling offices as a Regional Account Manager.

23. Michael Best is a resident of Washington D.C., and worked for Cogent's Sterling and Tyson's Corner offices as a Global Account Manager.

24. Brett Sampson is a resident of Falls Church, Virginia, and worked for Cogent's Tyson's Corner offices as a Regional Account Manager.

25. Bryan Murphy is a resident of Elkridge, Maryland, and worked for Cogent's Tyson's Corner and Reston offices as a Regional Account Manager.

26. George Barksdale is a resident of Sterling, Virginia, and worked for Cogent's Tyson's Corner and Sterling offices as a Regional Account Manager.

27. Joshua E. Bafalis is a resident of Sterling, Virginia, and worked for Cogent's Vienna and Sterling offices as a Regional Account Manager.

28. Mark Ryan Allen, Scott Bimba, David Blackwell, Matthew Boyce, Scott Carlisle, Raymond S. Fry III, Daniel Klein, Tim Lane, Ryan McGough, Nicholas Ross, Reginald Simpson, Spiros Myles Theodore, Jeff White, Jackson Hou, Eric Rinker, Harmandeep Singh, Steven W. Wright, Jr., Michael Best, Brett Sampson, Bryan Murphy, George Barksdale, and Joshua Bafalis each herein confirm and reaffirm their consent to participate as Plaintiffs in a case to seek unpaid wages under the FLSA and are hereinafter referred to as "Plaintiffs."

29. Cogent is a Delaware corporation with domestic and international offices, including an office in Houston, Texas, and an office in Washington, D.C. Cogent may be served through its registered agent, Corporate Service Company at Bank of America Center, 16th Floor, 1111 East Main Street, Richmond, Virginia 23219.

IV. FACTS

30. Cogent is an Internet and network service provider offering Internet access, data transport, and colocation services through their Internet data centers. Cogent services "Corporate" and "NetCentric" customers. Cogent's network spans across North America, across the Atlantic throughout Europe, and across the Pacific to Asia. With over 54,500 route miles of

intercity fiber and more than 16,600 metro fiber miles, Cogent provides service to over 170 major markets and interconnect with over 3,800 other networks. Cogent's employees regularly handle goods or materials that have moved in, or were produced for, commerce, such as computer monitors, workstations, printers, telephones, networking hardware, etc. Cogent is an enterprise engaged in commerce under the FLSA because at all times material hereto it had an annual gross volume of sales in excess of \$500,000.00.

31. Cogent employed Plaintiffs as salaried employees under such job titles as Regional Account Manager, Global Account Manager, and Account Executives.

32. The primary job duties of both Regional Account Managers, Global Account Managers, and Account Executives are non-exempt duties. Plaintiffs were engaged in commerce or in the production of goods for commerce on behalf of Cogent.

33. Plaintiffs routinely worked more than forty (40) hours in a workweek.

34. Cogent paid Plaintiffs a salary regardless of the number of hours they worked each week.

35. Despite its obligations under the FLSA, Cogent did not pay Plaintiffs any overtime.

V. CAUSE OF ACTION

36. Plaintiffs re-allege paragraphs 1-21 as if set out here in their entirety.

37. By failing to pay Plaintiffs overtime at one-and-one-half times their regular rates, Cogent violated the FLSA's overtime provisions.

38. Cogent owes Plaintiffs overtime at one-and-one-half times their regular rates for all hours worked in excess of forty hours in a workweek. Because Cogent knew, or showed

reckless disregard for whether its pay practices violated the FLSA, making its FLSA violations willful, Cogent owes these wages for at least the past three (3) years.

39. Plaintiffs are also entitled to liquidated damages in an amount equal to their unpaid wages.

40. Plaintiffs are also entitled to recover their reasonable attorneys' fees and costs incurred in this action.

VI. JURY DEMAND

41. Plaintiffs demand a trial by jury.

VII. PRAYER

42. Plaintiffs respectfully request judgment in their favor, awarding them:

- a. All unpaid overtime compensation, liquidated damages, attorneys' fees and costs under the FLSA;
- b. Pre- judgment and post-judgment interest on all amounts awarded at the highest rate allowable by law; and
- c. All such other and further legal and equitable relief to which Plaintiffs may show themselves to be justly entitled.

Respectfully submitted,

ZIPIN, AMSTER & GREENBERG, LLC



GREGG C. GREENBERG
Virginia Bar No. MD17291
gggreenberg@zagfirm.com
836 Bonifant Street
Silver Spring, Maryland 20910
Telephone: (301) 587-9373
Facsimile: (301) 587-9397

SHELLIST LAZARZ SLOBIN LLP

By: /s/ Daryl J. Sinkule¹

TODD SLOBIN (To Move Pro Hac Vice)

Texas State Bar No. 24002953

tslobin@eeoc.net

DARYL J. SINKULE (To Move Pro Hac Vice)

Texas State Bar No. 24037502

dsinkule@eeoc.net

SIDD RAO (To Move Pro Hac Vice)

Texas State Bar No. 24065947

srao@eeoc.net

DORIAN VANDENBERG-RODES

(To Move Pro Hac Vice)

Texas State Bar No. 24088573

drodes@eeoc.net

11 Greenway Plaza, Suite 1515

Houston, Texas 77046

Telephone: (713) 621-2277

Facsimile: (713) 621-0993

ATTORNEYS FOR PLAINTIFFS

¹ Signed by Gregg C. Greenberg with the express informed consent of Daryl J. Sinkule.